

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3 BEFORE THE HONORABLE LARRY R. HICKS, DISTRICT JUDGE

4 ORACLE USA, INC., a Colorado :
5 corporation; ORACLE AMERICA, :
6 INC., a Delaware corporation; :
7 and ORACLE INTERNATIONAL : No. 2:10-cv-0106-LRH-PAL
8 CORPORATION, a California :
9 corporation, :
10 Plaintiffs, :
11 vs. :
12 RIMINI STREET, INC., a Nevada :
13 corporation; and SETH RAVIN, :
14 an individual, :
15 Defendants. :
16

17 TRANSCRIPT OF JURY TRIAL - DAY 1
18 (Pages 1 through 39)

19 September 14, 2015

20 Las Vegas, Nevada

21
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1 LAS VEGAS, NEVADA, SEPTEMBER 14, 2015, 12:56 P.M.

2 --oOo--

3 P R O C E E D I N G S

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5 COURTROOM ADMINISTRATOR: Please rise.

6 THE COURT: Good afternoon. Please be seated.

7 COURTROOM ADMINISTRATOR: Today is the date and
8 time for jury trial in civil case 2:10-cv-106-LRH-PAL,
9 Oracle USA, Incorporated, and others, versus Rimini Street,
10 Incorporated, and others.

11 Counsel, can you please state your appearances
12 for the record.

13 MR. ISAACSON: Your Honor, it's Bill Isaacson
14 from Boies, Schiller & Flexner. With me is Karen Dunn from
15 Boise, Schiller.

16 MS. DUNN: Good morning, Your Honor.

17 MR. HIXSON: Good morning, Your Honor. Tom
18 Hixson with Morgan, Lewis & Bockius, and with me is John
19 Polito, also with Morgan, Lewis & Bockius for plaintiffs.

20 THE COURT: All right.

21 MR. HIXSON: Also, Dorian Daley from Oracle.

22 THE COURT: All right.

23 MR. WEBB: Good afternoon, Your Honor. Trent
24 Webb, Shook, Hardy & Bacon, for the defendants. With me is
25 Chris Dominek who is assisting us this afternoon. Beside

1 him is Seth Ravin, a defendant in the case, Mr. Strand with
2 my office, Peter Strand.

3 MR. STRAND: Good afternoon.

4 MR. WEBB: Mr. Rob Reckers.

5 MR. RECKERS: Good afternoon, Your Honor.

6 MR. WEBB: And Mr. West Allen.

7 THE COURT: Good afternoon. Welcome to all of
8 you. The assembly here may rival the jury panel, I'm not
9 sure.

10 A couple of things. First of all, it strikes me
11 that with so many counsel appearing in this matter that we
12 will not need to go through the introduction process when
13 the Court reconvenes, although I will have you do that, of
14 course, as we are selecting the jury.

15 And the only thing I would ask is that if you're
16 going to change the role of counsel as a result of a new
17 witness, or a new issue, or whatever, that you give me a
18 little bit of a heads up on that. But I'm sure we can work
19 with it, whatever the case.

20 I have reviewed the preliminary instructions
21 which were proposed by counsel, and they pretty much
22 followed what I normally give as preliminary instructions.
23 I went through the ones that I felt there was no dispute
24 about. I added some that I normally give, and I have
25 provided counsel with copies of all of that.

1 If there should be an objection to something,
2 that can certainly be raised after we have gone through
3 jury selection and before those instructions might be read.

4 It is not my practice to deliver those as
5 written instructions to the jury panel, rather just to read
6 them from the bench after the jury has been selected.

7 The one most important matter that concerned me,
8 though, was obviously the time that this trial is expected
9 to take because I'm going to have to address that with the
10 jury clearly in voir dire.

11 So let me start with plaintiff's counsel or
12 counsel jointly. What's your final best assessment?

13 MR. ISAACSON: Jointly, still at three weeks.

14 THE COURT: Pardon?

15 MR. ISAACSON: Three weeks, Your Honor.

16 MR. WEBB: The one caveat, Your Honor, obviously
17 we're not sure exactly what the case will look like, so we
18 may actually have another day or two depending on how it
19 goes. But right now, based upon what we think is going to
20 happen, we think three weeks is a pretty good bet.

21 THE COURT: So in outlining the expected
22 duration of the trial, I will say estimated range of three
23 to four weeks and hopefully within the three-week period.
24 Okay.

25 All right. Are there any last questions or

1 any -- I know there's a couple of motions that came in on
2 the -- rather late. I had a chance to look at them, but
3 that's basically it.

4 Is there anything else that -- and I would hope
5 to be able to give you rulings on those, and if I felt that
6 some argument on it was necessary, I would let you know,
7 but we would do that at a later time.

8 Is there anything else that counsel would like
9 to raise at this time?

10 MR. ISAACSON: I think the only thing that would
11 be helpful to get a ruling on, because it affects a slight
12 piece of opening statements, is the joint submission that
13 was made to Your Honor as to questions that were put to
14 customers. And counsel are prepared to argue it if you
15 want to hear argument at some point.

16 THE COURT: Okay.

17 MR. ISAACSON: But it was a -- I think a short
18 and sweet argument, depending on which side you want to --

19 MR. WEBB: Sweet or not.

20 THE COURT: Well, let's -- I'm not really
21 prepared to hear that now. I'd like to get on with jury
22 selection.

23 Well, let's see how much time it takes for jury
24 selection. If we have some time after that's been
25 completed, that's obviously a good time to address that

1 issue, even if I haven't had a chance to look closely at
2 what's been presented.

3 MR. ISAACSON: I think the only things were --

4 MR. WEBB: Your Honor, maybe you told us this
5 before, but we're not sure how many peremptories.

6 THE COURT: Well, the rules provide for three
7 per side. I haven't received a request for any additional
8 peremptories, and so that's what I assumed we would do, and
9 then I propose to seat nine jurors as we had mentioned
10 before, and I haven't heard any disagreement with that from
11 anyone.

12 MR. ISAACSON: I think that's all.

13 MR. WEBB: I think so. Thank you, Judge.

14 THE COURT: Okay. So then we will -- maybe a
15 couple of housekeeping matters too before we start on jury
16 selection.

17 First of all, insofar as if you're not at the
18 podium, you need to speak directly into your microphones at
19 counsel table as my court reporter just kindly pointed out.

20 And insofar as opening statements are concerned,
21 I expect counsel to remain at the podium, speak into the
22 microphone. The same applies with regard to calling
23 witnesses and questioning witnesses. And when you raise
24 objections, you need to be careful to kind of bend over and
25 speak into the microphone as well.

1 So I think that covers what we need to cover at
2 this juncture. So why don't we take a short recess while
3 the jury panel is brought up. Thank you.

4 (Recess from 1:04 p.m. until 1:14 p.m.)

5 (In the presence of the panel of prospective
6 jurors.)

7 THE COURT: Good afternoon. Please be seated.

8 COURTROOM ADMINISTRATOR: Today is the date and
9 time for a jury trial in civil case 2:10-cv-106-LRH-PAL,
10 Oracle USA, Incorporated, and others, versus Rimini Street,
11 Incorporated, and others.

12 Counsel, can you please state your appearances
13 for the record.

14 MR. ISAACSON: Bill Isaacson, Boies, Schiller &
15 Flexner, Your Honor, for the plaintiff, Oracle.

16 MS. DUNN: Karen Dunn, Your Honor, also for
17 Oracle, also from Boies, Schiller & Flexner.

18 MR. HIXSON: Tom Hixson, Your Honor, from
19 Morgan, Lewis & Bockius, for Oracle as well.

20 MS. DALEY: Dorian Daley for Oracle Corporation.

21 MR. POCKER: Richard Pocker, Boies, Schiller &
22 Flexner, also for Oracle.

23 MR. MAROULIS: Jim Maroulis, Oracle.

24 MR. POLITO: John Polito, Morgan Lewis, for
25 Oracle.

1 THE COURT: All right. Defense counsel?

2 MR. WEBB: Trent Webb, Shook, Hardy & Bacon, for
3 the defendants, Your Honor.

4 MR. STRAND: Good afternoon, Your Honor. Peter
5 Strand, Shook, Hardy & Bacon, for the defense.

6 MR. RECKERS: Your Honor, Rob Reckers, Shook,
7 Hardy & Bacon, for the defense as well.

8 MR. ALLEN: Your Honor, West Allen, from Lewis,
9 Roca, Rothgerber, on behalf of Rimini Street.

10 THE COURT: All right. Thank all of you.

11 Ladies and gentlemen who have been summoned here
12 as prospective jurors, I extend my early thanks to you in
13 appreciation for your being here.

14 First of all, I'm Judge Larry Hicks, and I'm the
15 presiding judge in this courtroom for this trial. We are
16 in courtroom 4B of the federal courthouse here in
17 Las Vegas.

18 And I like to explain to jurors why they're
19 here, and it isn't just in this case, which I think most of
20 you must sense that this is a complex case which is going
21 to take an extended period of time, but I like to give this
22 explanation in every case because I find that people kind
23 of take for granted why they are here as jurors.

24 I'll be asking you some questions in a little
25 bit about your qualifications to sit as jurors, but I'd

1 like to go to those reasons why you're here. This all goes
2 back to over 225 years ago to an event no less than the
3 founding of our Republic.

4 As you will recall from your history lessons,
5 our forefathers who lived on this side of the Atlantic
6 Ocean in the 1770s, were citizens of Great Britain. They
7 had come to populate the king's 13 colonies, and by 1776,
8 the colonists felt that they were being smothered under the
9 rule of England by such things as taxation without
10 representation, limitations upon them, and other laws which
11 were imposed on them by the English parliament.

12 The Declaration of Independence was signed on
13 July the 4th, 1776, and the 4th of July has come to be
14 recognized as the birth date of our country.

15 But the Declaration of Independence was followed
16 by eight years of war. The War for Independence was fought
17 and won, but afterwards our ancestors, now citizens of 13
18 states independent from Great Britain, were isolated from
19 the rest of the world and from each other as well.

20 Imagine what it was like back then, no
21 television, no radio, limited newspapers, no effective
22 source of communication, and the citizens of these 13
23 states had precious little binding them together in any
24 semblance of the nation.

25 Something had to be done that would be dramatic

1 that would hold these 13 states together as a nation and
2 protect them from being absorbed by the powers of Europe,
3 European countries which were just waiting for the 13
4 states to fall apart.

5 It was in this atmosphere, in the summer of
6 1887, that some outstanding leaders of the time, the
7 Washingtons, Jeffersons, Madisons, Hamiltons, even Benjamin
8 Franklin and others, met in Philadelphia, Pennsylvania,
9 over the summer of 1787, and over the course of nearly
10 three months and with numerous revisions, extensive debate,
11 and final decision, they drafted our Constitution, the
12 Constitution of the United States.

13 And if you've read and reviewed this outstanding
14 document, you will see that nowhere in the Constitution is
15 there a word about what would be the rights of the citizens
16 under this new, united government.

17 There was nothing about freedom of speech,
18 nothing about freedom of religion, nothing about protection
19 from unreasonable searches and seizures, nothing about a
20 right to due process of law, and nothing about the right to
21 a trial by jury.

22 It's the mark of the trust of the leaders of the
23 time, because they persuaded their fellow citizens that if
24 they would ratify this constitution, that the very first
25 work of the new Congress would be to pass a list of the

1 rights of citizens and submit them to the citizens for
2 approval.

3 The ratification of the constitution required 11
4 of the 13 states. And with the promises of this first work
5 by the new Congress which would be created, the
6 Constitution was ratified unanimously by all 13 states.

7 And, as promised, our first Congress met and
8 drafted what we commonly call our Bill of Rights. The Bill
9 of Rights became the first 10 amendments to our
10 constitution, and included within those 10 amendments are
11 our rights to freedom of religion, freedom of speech, due
12 process of law, other valuable rights, and, of course, the
13 very reason why you've been summoned here today, the right
14 to a trial by jury.

15 The Seventh Amendment provides that if private
16 citizens have a dispute, that they will have the right to
17 come into court and have their dispute heard and resolved
18 by a jury of their fellow citizens. That is the right that
19 each one of you ladies and gentlemen will have in the event
20 that you're chosen to serve as a juror on this case.

21 The democratic form of government created by our
22 constitution has been a resounding success. Our
23 constitution today stands as the model of its kind over 225
24 years after its creation.

25 Countries which have gained independence over

1 the past two centuries have realized they had to forge some
2 document of self-government, and the first place they have
3 looked to is our constitution because it is the best
4 constitution ever written by the hand of man. It has
5 worked better and lasted longer than any before or since.

6 In 1900, there were only 10 countries with
7 democratic forms of government. By 2015, there are roughly
8 120, all of them having followed in some fashion our
9 constitutional form of government.

10 And that's why you're here today, because you
11 are citizens of Nevada and ultimately will compose a fair
12 and impartial jury to decide this case.

13 This is a civil case. There will be nine of you
14 who are selected. In the federal court we do not have
15 alternate jurors on civil cases so the nine of you who are
16 selected will be the jury who will decide this case.

17 Of course, there will have to be some questions
18 that are asked of you, which I will ask, to determine
19 that whoever is selected can be completely fair and
20 impartial.

21 I'm not going to pry into any personalities or
22 rattle anyone's cages, but I'm sure you understand that
23 there are some questions that we must ask just to ensure
24 that each side will have a completely fair and impartial
25 jury decide their case.

1 We need the information from these questions in
2 order to come to a mutual decision that, yes, it would be
3 fair to ask you to sit on this case, and it would be fair
4 to the parties and to yourselves to make a commitment to
5 serve on this jury and decide this case as fairly as you
6 can.

7 I'm going to ask at this time for all of our
8 prospective jurors to please stand and raise your right
9 hands and be sworn for purposes of our questioning.

10 COURTROOM ADMINISTRATOR: Do you, and each of
11 you, solemnly swear that you will well and truly answer all
12 questions put to you touching on your qualifications to
13 serve as a trial juror in the case now pending before this
14 Court, so help you God?

15 (The Prospective jurors responded
16 affirmatively.)

17 COURTROOM ADMINISTRATOR: Thank you. Please be
18 seated.

19 THE COURT: Ladies and gentlemen, I also would
20 point out that -- and I know this from having presided over
21 many jury trials, there are many of you who have limited
22 opportunity to provide public service. It's just not in
23 the nature of your employment, your occupations or what you
24 may be doing in your lives. And I can tell you that jury
25 service is one of the most valuable forms of public service

1 known in our country.

2 Our system of justice depends upon good jurors.
3 And I know that if any one of you were a party to a case in
4 this or any other court, you would want your case decided
5 by a jury compromised of citizens much like yourselves.

6 In earlier times we used to roll a wheel with
7 everyone's names in it and pull their names out and have
8 them seated in the jury box.

9 The reason we will seat some of you in the jury
10 box is to establish our initial panel. This panel will
11 undoubtedly change. Some of you who aren't called may be
12 called as other prospective jurors may be excused from the
13 jury box.

14 But the point of my comment is that your names
15 have been selected randomly by computer. We don't roll the
16 wheel anymore, we just call up your names, and I'll direct
17 you where you should be seated, and please rest assured
18 that your names have been selected randomly.

19 (Jury empaneled and sworn.)

20 COURTROOM ADMINISTRATOR: Thank you. Please be
21 seated.

22 THE COURT: Ladies and gentlemen, I'm about to
23 excuse you for the evening, but I'll give you a little bit
24 of an outline of what you can expect tomorrow.

25 As I said, we'll start promptly at 8:00 in the

1 morning. And I will have some preliminary instructions for
2 you that will just give you a little bit of a roadmap
3 concerning how the law applies to evidence but -- not
4 specifically so much to this case but to every case.

5 And following that, the attorneys will present
6 their opening statements in which they timeline what they
7 expect their evidence will be in the case.

8 The plaintiff goes first, Oracle, because Oracle
9 carries the burden of proof as plaintiff. The defense
10 could give its opening statement then, or they could wait
11 until the conclusion of Oracle's evidence and then give it.

12 After the opening statement or statements have
13 been given, we will then proceed with the witnesses who are
14 called on behalf of Oracle.

15 And when the Oracle evidence is -- and witnesses
16 have all been called and presented, then the defense, of
17 course, would have an opportunity to present its evidence
18 and call its witnesses and offer its exhibits.

19 So I think we're in good shape to release you
20 for the evening. I thank you very much for your
21 straightforward answers, your cooperation here this
22 afternoon throughout these proceedings, and I look forward
23 to being the presiding judge in the trial with jurors such
24 as you.

25 So at this time, I will excuse you, and you may

1 go ahead and step down.

2 Oh, and let me tell you. In the morning -- we
3 should cover that. What I'll do is I'll take a recess
4 right now so that my court clerk Dionna can show you where
5 you will go in the morning and orient you a little bit with
6 regard to that.

7 One other thing I like to mention to you, and I
8 should have probably said it before now, and that is please
9 take no offense if you pass one of the attorneys or a party
10 in this case in the hallway and they say something to you.

11 They all know that the rules of professional
12 conduct say that they are not to have any kind of a
13 communication or exchange with any juror. So please take
14 no insult from that whatsoever. Expect that to be the
15 case.

16 And I need to give you the admonishment not to
17 discuss this case in any way. It would be a violation of
18 your oath as jurors to be discussing this case with anyone,
19 and that includes family and friends. I know it's
20 difficult, it's one of the sacrifices that you take on in
21 giving your oath as jurors in this case.

22 So please do not discuss the case. Please don't
23 allow anyone to discuss it in your presence. Remove
24 yourself if you see that that is happening.

25 And we will take a brief recess so that Madam

1 Clerk can show you where you go tomorrow. And we look
2 forward to seeing you in the morning. There will be
3 refreshments in the jury room, coffee, donuts, and some
4 limited beverages I believe too.

5 So at this time let's take our brief recess.
6 And, Counsel, I'll meet with you in open court in
7 approximately five to ten minutes.

8 (Jurors exit courtroom at 4:28 p.m.)

9 (Recess from 4:28 p.m. until 4:47 p.m.)

10 (Outside the presence of the jury.)

11 THE COURT: All right. Have a seat, please.

12 Okay. The record will show that we're convened
13 in open court. The parties and counsel are present. The
14 jury is not present.

15 Counsel, I don't know if you have any other
16 questions. I know that two motions are pending in front of
17 me, the one that concerns the motion to compel witness's
18 appearance, and the other one concerning the form of the
19 questions on the certain witnesses.

20 Which one of those would you like to address
21 first? I'll give the option to defense.

22 MR. RECKERS: It would make sense to take up the
23 customer depo motion.

24 THE COURT: All right.

25 MR. RECKERS: Your Honor, Rob Reckers for the

1 defense.

2 The issue here is one that we've tried to put in
3 before Your Honor in a condensed manner. There's 11
4 depositions that sort of ask the same question, where the
5 same outline was used. And I'll go through the outline
6 quickly. And this is in our section of the brief, the
7 joint filing on page 9.

8 The questions were along the lines of: Would
9 the client have switched to Rimini Street if the client
10 knew that Rimini was breaking the law, that Rimini was
11 doing something unauthorized, was doing something outside
12 the license, was a copyright infringer?

13 We have these series of questions that suggest,
14 Your Honor -- these are loaded questions that actually
15 don't elicit any real evidence.

16 Of course, no one is going to say that, yes, we
17 would infringe a copyright, that we would go with an
18 infringer. All we've shown is for the common sense -- the
19 common sense response from these witnesses that they would
20 say they're not going to break the law.

21 And that gets to my second point is these
22 questions don't go to the specific issues of causation. I
23 read plaintiffs' arguments in response. They talk about a
24 lot of different evidence. They talk about evidence going
25 to specific statements, statements regarding the alleged

1 infringement, the cross-use, the local copy.

2 Those are the proper questions. And those are
3 the questions that may have -- speak to the issue, and
4 that's the evidence from which this can be potentially
5 decided, not open ended, I would suggest, trick-loaded
6 questions.

7 Which gets to, I think, the last point -- I'll
8 try to be brief, because I know we've been here all day --
9 which is the 602/701 issue.

10 But these are incomplete hypotheticals. You're
11 just saying in the abstract: Would you go with someone who
12 is infringing? Would you go with someone who is violating
13 a license?

14 In the real world we know that people are
15 accused of infringement and are found to infringe patents
16 and copyrights all the time.

17 I have a smartphone. I know the smartphone I
18 have has been accused of violating patents in many
19 instances. Are you asking me is that a good thing to
20 infringe a patent? Of course not. But we still buy these
21 smartphones.

22 And in this case, even for these clients, after
23 the judgment in this case, or after Your Honor's first
24 summary judgment, most of them are -- still stayed with
25 Rimini Street, which just shows the unfairness of the

1 question that when you put a hypothetical like that out,
2 it's not really probative or appropriate as to what
3 actually happened in the real world.

4 In here we have a finding of infringement.
5 We've had a finding of infringement since February 2014.
6 But yet this testimony suggests that these customers would
7 have left Rimini or never gone to Rimini. And so I would
8 suggest that just the questions themselves are improper,
9 both under 401, 403, 602, and 701.

10 Happy to address any of Your Honor's questions.

11 THE COURT: All right. No. I understand your
12 argument. Thank you very much, Mr. Reckers.

13 MR. HIXSON: Good afternoon, Your Honor. Tom
14 Hixson for Oracle.

15 Oracle deposed a number of customers in this
16 case, Rule 30(b)(6) depositions, concerning their decision
17 to terminate support with Oracle and go to Rimini.

18 The witnesses were by and large people in the
19 procurement departments at the customers who have
20 responsibility for making the decision to go with Rimini
21 for support. They were on the receiving end of
22 communications, communications that Oracle contends were
23 misrepresentations about Rimini's support. They were the
24 individuals who were either the decision makers or who made
25 recommendations to the decision makers concerning that

1 decision to leave Oracle for Rimini.

2 And so we posed to those witnesses a variety of
3 different questions: If you had known X. For each witness
4 we had to tailor what X was so that it matched the specific
5 evidence that we had concerning that customer.

6 For example, if the proof showed that Rimini
7 Street had used that customer software to make an
8 unlicensed local copy we would ask: Would you have
9 recommended switching to Rimini Street for support if you
10 had known that Rimini would make a copy unlicensed by your
11 software license? Or if they had been on the receiving end
12 of a patch that was developed through cross-use, then we
13 might phrase the question: Would you have gone to Rimini
14 or recommended going if you had known that their support
15 made improper use of intellectual property?

16 So we framed our hypotheticals in terms of the
17 evidence that we knew to be true.

18 And so that gets to why this evidence should be
19 admitted as it goes to the key issue of causation. We have
20 sued them for tortious interference and other claims saying
21 that these misrepresentations about the business model were
22 a significant factor in causing the customers to leave
23 Oracle for Rimini.

24 In the joint pretrial order Rimini states flat
25 out that their biggest defense is causation. And

1 Mr. Reckers echoed that here today. You heard him say that
2 Oracle can't show that these events were causally related.

3 And so we offer the testimony of the individuals
4 who made these decisions or who recommended making these
5 decisions who had seen these representations for Rimini.
6 And we asked, "If you had known what was true, what would
7 you have done?"

8 And we cited to Your Honor the case of *United*
9 *States v. Cuti* saying in this type of situation, where that
10 person was involved in that decision and they were on the
11 receiving end of misrepresentations, that comes in lay
12 witness testimony, it's lay opinion testimony that is
13 valid.

14 And then we went further in the brief to Your
15 Honor to show that we understand the question, "If you had
16 known Rimini were run by space aliens, would you have gone
17 with them" would have a problem, right, because of a space
18 alien problem.

19 So we cited in this brief the broad evidence
20 showing that Rimini had a pattern and practice of
21 misrepresenting the nature of its infringing services by
22 not disclosing and by affirmatively misrepresenting it.

23 And then we went further and showed Your Honor
24 in our filing specific evidence for these particular
25 customers evidence at issue showing that they also received

1 those misrepresentations.

2 And then we cited for Your Honor specific
3 evidence showing that those customers Rimini committed
4 infringement under the terms of Your Honor's orders for
5 those particular customers as well as the Court's more
6 general finding that Rimini has committed infringement
7 across the board with respect to Database and that with
8 respect to PeopleSoft as well.

9 So when we asked, "If you had known X," we made
10 sure X was true. And the Court's orders later confirmed
11 that X was true. And we were taking depositions of people
12 who were involved, who were percipient, who had been
13 receiving those communications, and who were in as good a
14 position as anybody to say what they would have recommended
15 or what that customer would have done based on having this
16 newly acquired information available to it.

17 There's nothing wrong with that hypothetical
18 question as long as you're asking a person who was
19 percipient and involved and you're asking a hypothetical
20 that's realistic.

21 And we show in our submission that we were
22 asking percipient people questions that were grounded in
23 fact and that we have shown to be true and that Your
24 Honor's summary judgment orders have borne out to be true.

25 And, again, if Rimini is going to dispute

1 causation and say that we haven't proven it, then it seems
2 difficult for them to protest some of the best evidence
3 showing causation, which is the actual decision makers, or
4 people recommending decisions, saying that they would not
5 have contracted with Rimini if they had known the facts
6 which have now been established through the Court's orders
7 that have been proven to be true.

8 And so we submit that this evidence is relevant
9 to the element of causation and, indeed, is highly
10 probative of that, some of the most probative evidence,
11 because it's the testimony of the decision makers or those
12 who made the recommendations that were then adopted by the
13 decision makers.

14 And so we flesh it out more fully in the
15 submission to the Court. But that is the essence of our
16 argument.

17 And I'm happy to answer any additional questions
18 the Court has.

19 THE COURT: No, I don't have any.

20 MR. HIXSON: Thank you, Your Honor.

21 THE COURT: Thank you very much, Mr. Hixson.

22 Mr. Reckers, is there anything further that
23 you'd like to reply?

24 MR. RECKERS: Yes. Briefly, Your Honor.

25 And Mr. Hixson is right, there is further

1 evidence in the case about what the acts were that are
2 accused that may have some bearing on this.

3 Respectfully, if you look at the question that
4 they actually asked, there isn't that nexus that we have
5 this sort of straw man, this simple question, breaking the
6 law, doing things that are unauthorized and infringing.

7 The question -- I'll read it from Wendy's, which
8 is one example. Excuse me. I'll start with the BlueCross
9 and BlueShield: Would you have allowed Rimini to install
10 software on its computers if you knew it was not proper
11 under the Oracle license?

12 And, of course, they say, no, they wouldn't.

13 Is it important to BlueCross and BlueShield to
14 comply with the contracts and to comply with the law?

15 Is that probative, it's important to the
16 witness's answers -- is it important to comply with the
17 contracts and to comply with the law?

18 In fact, do you have a code of conduct at
19 BlueCross BlueShield requiring you to comply with the law?

20 Yes.

21 And so I don't think that these actually get to
22 the questions that Mr. Hixson is asking about but rather
23 they are abstract questions about a company's preference to
24 follow the law, which, of course, always they are going to
25 say they are. And that's my only point, Your Honor.

1 THE COURT: Okay. All right. Well, I've looked
2 at it. I've considered it. I appreciate each party's
3 arguments. I -- it is relevant to causation. It obviously
4 raises chicken-and-egg questions that arise on almost every
5 case.

6 But the Court's ruling is that the -- the
7 questions as formed are admissible, but they invite a
8 limiting instruction from the Court. And I would envision
9 a short limiting instruction. And I encourage both parties
10 to submit a proposed limiting instruction to the Court that
11 I would so instruct the jury at the time any such evidence
12 is presented.

13 The bottom line is I think it's relevant to
14 causation. My understanding of the case is I believe that
15 there will be evidence from which plaintiffs would be able
16 to argue that the question was an appropriate question. I
17 haven't seen and heard that evidence yet. Some of it bears
18 directly or indirectly upon some rulings of the Court.

19 But the fact is the Court's understanding of the
20 case is that it is likely that there will be evidence from
21 which plaintiff could have -- plaintiffs could have based
22 that question. And for that reason I'm going to allow the
23 questions. But I will give an appropriate limiting
24 instruction.

25 That's not to say that I will give either one of

1 the ones submitted by counsel, but hopefully those will
2 give me some direction, if they're not acceptable, on what
3 would be susceptible.

4 And needless to say if at the end of the case
5 the evidence turns out not to have supported at all a
6 reasonable inference that would have allowed the
7 question -- the nature of the questions being asked, the
8 Court would consider a motion to strike at that time.

9 But, again, it's not my understanding of the
10 case that that evidence would not be presented. That's not
11 to say the Court would find in favor of it one way or the
12 other or I expect the jury would one way or the other. But
13 I believe there's evidence from which a reasonable
14 inference could be drawn by plaintiffs that would support
15 the question posed. So that will be the ruling of the
16 Court.

17 I'd like to have that proposed limiting
18 instruction -- well, I just -- I need it with sufficient
19 time to consider it before the evidence is presented. I
20 don't think that my ruling is going to affect your ability
21 in opening statements. So perhaps you can give me some
22 insight on when such a proposed limiting instruction should
23 be submitted. Mr. Isaacson?

24 MR. ISAACSON: Sure. And in opening -- we can
25 get that to you very promptly, whenever you want it. But

1 we had intended in opening statement just to show one
2 example of one customer with one of those questions and to
3 say it related to the issue of causation. And so that's
4 what -- all we intended to do with it in the opening.

5 THE COURT: Okay. Well, I'm not going to be
6 giving limiting instructions in the course of counsel's
7 opening statements. I would give it in the course of the
8 presentation of evidence. And obviously I expect the good
9 faith of counsel in the manner in which the question or
10 questions are handled in the course of opening statement.

11 MR. ISAACSON: And your -- your -- in terms of a
12 limiting instruction, do I understand the Court to be
13 saying the limiting instruction along the lines that this
14 evidence, if you accept it, is relevant to the issue of
15 causation and not other issues?

16 THE COURT: Yes. But it -- the question also
17 assumes certain conclusions. And I think the limiting
18 nature of the instruction should be directed at that as
19 well.

20 MR. ISAACSON: Okay. We should be able to work
21 on that together.

22 THE COURT: All right. The other motion
23 concerns the witness.

24 Do you want to address that motion at this time?

25 MR. RINGGENBERG: Yes, Your Honor. Please. So

1 I think both parties can make plans accordingly.

2 Mr. Kevin Maddock is senior vice-president in
3 sales at Rimini Street. He's the number three man in the
4 company based on his compensation as disclosed in their SEC
5 filings.

6 Rule 45 allows enforcement of a subpoena where
7 the individual, even if they reside elsewhere, is employed
8 or regularly transacts business in person in the
9 jurisdiction. Rimini's headquarters is a few miles from
10 this building. Mr. Maddock admits that he's traveled to
11 that location approximately 20 times in the course of the
12 discovery in this case.

13 We suggest the evidence submits a larger
14 inference, but that's what he's admitted to. And given his
15 role as a senior officer of a company headquartered here
16 with duties to the company, we think that's a more than
17 sufficient basis for the Court to conclude that he meets
18 the requirements of the subpoena.

19 His testimony is significant. It relates to the
20 issue of causation. Mr. Maddock was produced as a 30(b)(6)
21 witness on Rimini's representations to their customers
22 about their intellectual property practices. And in the
23 course of that, he admitted Rimini's practice of making
24 representations that we contend, and we believe the Court
25 has already found, were false.

1 We believe the jury should hear that live. We
2 believe it's important. And the jury would prefer it. And
3 the rules allow it. The only other argument they have made
4 is that he hasn't been served with a subpoena, which is
5 true.

6 If the Court were to rule that if he was served
7 with a subpoena he would be required to appear, I'm quite
8 certain Mr. Maddock would prefer not to have a process
9 server on his doorstep and that we could arrange a mutually
10 agreeable date for his appearance, which is why we haven't
11 issue one because we didn't know what date would be a good
12 date for him. But as soon as we do, we would be happy to
13 out Mr. Maddock's appearance, which we've explained to
14 Rimini Street.

15 The last thing I would point out is until a few
16 weeks before trial he was on both sides' witness list. So
17 it really wasn't until the 24th that he -- Rimini Street
18 told us they would not be producing him, at which the
19 parties promptly agreed to submit this issue to the Court
20 so we could all make plans accordingly. Thank you.

21 MR. RECKERS: Your Honor, Rob Reckers again for
22 the defendant. Quickly -- I know we filed briefs on this.

23 Mr. Maddock does personally conduct business in
24 Las Vegas on a regular basis. I believe our submission
25 said he comes here two to three times a year. It's true

1 that Rimini has an office here. Mr. Maddock lives in
2 California, lives in the Bay area, works in the Bay area
3 there.

4 He travels extensively for work. He does come
5 to Las Vegas, again, two to three times a year. It's in
6 our evidence. We submitted a declaration from Mr. Maddock.

7 I would submit that that doesn't qualify him as
8 someone within the subpoena jurisdiction of the court. And
9 that's really the end of the story with that.

10 The other issues aside, he was put up for
11 deposition twice. He had his 30(b)(6) deposition, a
12 personal depo. They've got two full days of deposition
13 with Mr. Maddock.

14 In working to avoid having to bring this to your
15 attention, Your Honor, we've put up -- we've offered to
16 Oracle for their case in chief Rimini's next most senior
17 salesperson, someone named Michael Davichick, also a
18 vice-president who has been with the company longer.

19 Mr. Maddock -- or Mr. Davichick would be
20 available to address most of the same subject matter as
21 Mr. Maddock. Really the reason why we've tried to put
22 Mr. Davichick in for Mr. Maddock, even if it were
23 appropriate to call Mr. Maddock, is that this is the end of
24 the sales quarter for Rimini Street.

25 Mr. Maddock is extremely busy professionally.

1 He has prearranged business travel over the next few weeks.
2 And he is, you know, the most -- one of the most senior
3 people in the company trying to get to the end of this
4 sales quarter, which is traditionally a busy sales quarter
5 for Rimini Street.

6 So for those reasons we submit that Mr. Maddock
7 need not be and should not be compelled to testify live in
8 this trial.

9 THE COURT: All right. Any reply on behalf of
10 plaintiff?

11 MR. RINGGENBERG: Yes, Your Honor. Just very
12 briefly.

13 I'm sure Mr. Maddock is busy. The Oracle
14 executives who will be testifying in trial here are very
15 busy. Oracle's CEO is in the courtroom.

16 This trial is very important to both companies.
17 That Mr. Maddock couldn't clear a day or two to come to Las
18 Vegas for a trial, which Rimini has represented is about
19 the future of the company, I think is unrealistic.

20 Mr. Maddock admitted in his deposition the
21 pattern and practice that is the basis for our claims. And
22 we want him to explain that to the jury. It's very
23 straightforward, Your Honor. Thank you.

24 THE COURT: It's not clear to me, and I'll allow
25 both sides to comment on this, what is his actual title and

1 position, and why is it that you make -- made the statement
2 that he's essentially number 3 in the company?

3 MR. RINGGENBERG: I think Mr. Reckers agreed
4 with me on that. Our basis is their SEC filing in which
5 they listed the executives of the company and how they're
6 compensated. He's number 3 on that list. And I think
7 Mr. Reckers agrees.

8 You could probably come up with different
9 rankings of the officer, but that's the specific basis
10 we've cited. And I don't -- have not heard them
11 specifically disagree with it. His title is senior
12 vice-president of sales.

13 MR. RECKERS: Your Honor, he's the head of
14 sales. And so there's different ways to think about the
15 company. And I believe they're right about the SEC filing.
16 He's the head sales person at the company -- or maybe not
17 person -- he runs the sales department at the company, has
18 done so since about 2009.

19 THE COURT: All right. It strikes me that
20 there's no prejudice here by virtue of his being called
21 because he's been listed by both sides throughout the case.
22 And he's beyond the subpoena reach of the Court. And
23 that's a significant factor to the Court. And there's also
24 some indication that there was expectation that he would be
25 testifying.

1 So the thing I look at the most is his role and
2 position in the company. And the fact is if he's a senior
3 vice-president and he's in charge of all sales, I'm of the
4 view that he should -- he should testify. I'm of the view
5 that the motion should be granted.

6 But in granting it, I would expect that
7 plaintiffs' counsel would work as well as they could with
8 defense counsel to minimize the time for his appearance and
9 schedule it in such a way that there's minimal
10 inconvenience to him because there's obviously some
11 inconvenience.

12 And I recognize that September is the end of the
13 quarter. And I assume that's an important time for the
14 company. I don't have any reason to question that.

15 So the fact is he's so highly placed in the
16 company and the Court sees such a lack of prejudice to
17 either side by virtue of his attending to testify that -
18 Rimini, being the defendant in this case, one of the
19 defendants in this case, that he should be here.

20 MR. RINGGENBERG: Thank you, Your Honor. We
21 will work with them to find a date that works.

22 THE COURT: Thank you very much.

23 Is there anything else that we need to address
24 at this time?

25 I did -- I think at calendar call we discussed

1 that the exclusion of witnesses was in force and in effect.
2 I just wanted to reaffirm that with counsel.

3 MR. ISAACSON: Yes, Your Honor. We talked about
4 it amongst ourselves. And I wouldn't call it an exception.
5 Both sides were okay if witnesses were present during
6 opening statement. But otherwise they would be sequestered
7 until they testified.

8 And I guess the other, you could call it,
9 exception is we would be calling Mr. Ravin in our case.
10 And while he's on the stand we would not expect counsel to
11 be talking to them -- talking to Mr. Ravin.

12 But they may call him back in their case. And
13 we don't have any objection if the lawyers do work with
14 Mr. Ravin in between testimony 1, testimony 2, if there is
15 a testimony 2.

16 THE COURT: All right.

17 Mr. Webb?

18 MR. WEBB: Your Honor, we agree with that
19 approach.

20 THE COURT: All right. Both sides agreeing to
21 it, it's acceptable to me as well.

22 So the Rule of Exclusion during opening -- is
23 not applied during opening statements, will be afterwards.
24 Is that correct?

25 MR. ISAACSON: And we understand the Rule of

1 Exclusion to be talking about fact witnesses, not expert
2 witnesses.

3 THE COURT: Yes. Yes. Okay.

4 And let's see. There was also an issue my clerk
5 mentioned, that there still was not a stipulation
6 concerning exhibits? Or it hadn't been completed.

7 MR. ISAACSON: Yes. It's imminent. I think the
8 Is are being dotted and Ts being crossed. But there are a
9 large number of exhibits of which the parties have agreed
10 may be preadmitted. So there will be a likely stipulation.

11 THE COURT: All right. Good.

12 And I gave you a copy of those preliminary
13 instructions. Are there any objections to what the Court
14 proposes to give?

15 MR. WEBB: Not from the defendants, Your Honor.

16 MR. ISAACSON: And not from Oracle.

17 THE COURT: Okay. And then a one-hour cap on
18 opening statements.

19 And I think that should cover everything I need
20 to cover at this time. All right.

21 I appreciate the professionalism I've seen. I'm
22 pleased that we were able to seat a jury this afternoon.
23 And we'll get started promptly at 8:00 in the morning.

24 (The proceedings adjourned at 5:13 p.m.)

25 * * *

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I certify that the foregoing is a correct
transcript from the record of proceedings
in the above-entitled matter.



9/15/15

Donna Davidson, RDR, CRR, CCR #318
Official Reporter

Date